

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MARION C. BURNETT,) No. ED CV 11-00636-JHN(VBK)
)
 Plaintiff,) ORDER RE DISMISSAL OF COMPLAINT
) WITH LEAVE TO AMEND
v.)
)
WARDEN SANDERS,)
)
 Defendant.)
)
_____)

Pro se prisoner Marion C. Burnett (hereinafter referred to as "Plaintiff") filed a Civil Rights Complaint Pursuant to 42 U.S.C. §1983 on May 17, 2011, pursuant to the Court's Order re Leave to File Action Without Prepayment of Full Filing Fee. Plaintiff alleges that his civil rights were violated by Defendants Associate Warden Aref; Chief Medical Officer Maxwell; J. Valenzuela; K. Vasquez; D. Foston; Sgt. Snyder; Sgt. Kendrick; Officer Pearson; Officer Reed; Officer Ellis; Officer Zimmer; Officer Boyd; and John Does. (Complaint at 3-5, additional pages numbered 3.)

Plaintiff alleges the following civil rights violations: "deliberate indifference, cruel and unusual punishment" (Claim I) and "cruel and unusual punishment, discrimination, HIPPA rights and

1 reprises." (Claim II.) (Complaint at p. 5, additional page numbered
2 5.)

3 Plaintiff fails to set forth specific facts against each
4 individual Defendant. Rather, Plaintiff has attached appeals and
5 correspondence. (See Exhibits ["Exs."] AA-CC.)

6

7 **STANDARD OF REVIEW**

8 Because Plaintiff is seeking to proceed in forma pauperis, the
9 Court shall review such a complaint "as soon as practicable after
10 docketing." Pursuant to 28 U.S.C. §1915(e)(2), the District Court is
11 required to dismiss a complaint if the Court finds that the complaint
12 (1) is legally frivolous or malicious, (2) fails to state a claim upon
13 which relief may be granted, or (3) seeks monetary relief from a
14 defendant immune from such relief. 28 U.S.C. §1915(e)(2)(B) (re: all
15 in forma pauperis complaints).

16 A complaint may also be dismissed for lack of subject matter
17 jurisdiction, pursuant to F.R.Civ.P. 12(b)(1). Neitzke v. Williams,
18 319, 327 n.6, 109 S.Ct. 1827 (1989) (unanimous decision)(patently
19 insubstantial complaint may be dismissed under Rule 12(b)(1) for lack
20 of subject matter jurisdiction. When considering a dismissal, a Court
21 must accept as true all allegations and material facts and must
22 construe those facts in a light most favorable to the plaintiff.
23 Resnick v. Hays, 213 F.3d 443, 447 (9th Cir. 2000). However, a "court
24 [is not] required to accept as true allegations that are merely
25 conclusory, unwarranted deductions of fact, or unreasonable
26 inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th
27 Cir. 2001). Nor is a Court "bound to accept as true a legal
28 conclusion couched as a factual allegation." Ashcroft v. Iqbal, ____

1 U.S. ___, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 858 (2009).

2 "To survive a motion to dismiss, a complaint must contain
3 sufficient factual matter, accepted as true, to 'state a claim to
4 relief that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949
5 (quoting Twombly, 550 U.S. at 570). "A claim has facial plausibility
6 when the plaintiff pleads factual content that allows the Court to
7 draw the reasonable inference that the defendant is liable for the
8 misconduct alleged." Iqbal, 129 S.Ct. 1937, 1949, 172 L.Ed.2d 868
9 (2009)(citing Twombly, 550 U.S. at 556.) "The plausibility standard
10 is not akin to a 'probability requirement,' but it asks for more than
11 a sheer possibility that a defendant acted unlawfully." (Id.)
12 Although a complaint need not include "'detailed factual allegations,'
13 ... [a] pleading that offers 'labels and conclusions' or 'a formulaic
14 recitation of the elements of the cause of action will not do.'"
15 Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555. The
16 Complaint must contain "factual content that allows the court to draw
17 the reasonable inference that the defendant is liable for the
18 misconduct alleged." Iqbal, 129 S.Ct. at 1949. "[W]here the well-
19 pleaded facts do not permit the court to infer more than the mere
20 possibility of misconduct, the complaint has alleged - but it has not
21 'show[n]' - 'that the pleader is entitled to relief.'" (Id. at 1950
22 [quoting Fed.R.Civ.P. 8(a)(2) (internal brackets omitted)]. "[A] well-
23 pled complaint may proceed even if it appears that a recovery is very
24 remote and unlikely." Twombly, 55 U.S. at 556, 127 S.Ct. 1955
25 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683 (1974)).

26 In civil rights cases in which the Plaintiff appears pro se, the
27 pleadings must be construed liberally, so as to afford the plaintiff
28 the benefit of any doubt as to the potential validity of the claims

1 asserted. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623
2 (9th Cir. 1988). If, despite such liberal construction, the Court
3 finds that the complaint should be dismissed for failure to state a
4 claim, the Court has the discretion to dismiss the complaint with or
5 without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th
6 Cir. 2000). A pro se litigant should be given leave to amend, unless
7 it is clear that the deficiencies of the complaint cannot be cured by
8 amendment. Lopez, 203 F.3d at 1130-31; Cato v. United States, 70 F.3d
9 1103, 1106 (9th Cir. 1995); Noll v. Carlson, 809 F.2d 1446, 1448 (9th
10 Cir. 1987).

11

12 **A. Federal Rule Of Civil Procedure 8(a).**

13 Federal Rule of Civil Procedure 8(a)(2) requires "a short and
14 plain statement of the claim showing that the pleader is entitled to
15 relief," in order to "give the defendant fair notice of what the ...
16 claim is and the grounds upon which it rests." Bell Atlantic Corp. v.
17 Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007); Erickson v.
18 Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007). "The plaintiff must
19 allege with at least some degree of particularity overt acts which
20 defendants engaged in that support the plaintiff's claim." Jones v.
21 Community Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984).
22 Rule 8 is designed to provide Defendants with fair notice of the
23 claims against them and the grounds on which those claims rest. See
24 McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991). When a complaint
25 fails to comply with Rule 8, it may be dismissed pursuant to
26 F.R.Civ.P. 41(b). McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir.
27 1996)(complaint properly dismissed under Rule 41 for failure to comply
28 with Rule 8 in Court Order).

B. Federal Rule of Civil Procedure 10(b).

Rule 10(b) requires that "A party must state its claims or defenses in numbered paragraphs, each limited as far as practical to a single set of circumstance ... If doing so would promote clarity, each claim founded on a separate transaction or occurrence ... must be stated in a separate count ..." Fed.R.Civ.P. 10(b). "Separate counts will be required if necessary to enable the defendant to frame a responsive pleading or to enable the court and the other parties to understand the claims." Bautista v. Los Angeles County, 216 F.3d 837, 840 (9th Cir. 2000)(citations and quotations omitted). "Courts have required separate counts where multiple claims are asserted, where they arise out of separate transactions or occurrences, and where separate statements will facilitate a clear presentation." Id. "Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice." Id.

18 Here, Plaintiff has sued 12 Defendants in 2 causes of action,
19 each of which raises multiple sub-claims.

DISCUSSION

A. Section 1983 Pleading Requirements.

In order to state a claim under section 1983, a plaintiff must
allege that: (1) the defendants were acting under color of state law
at the time the complained of acts were committed; and (2) the
defendants' conduct deprived plaintiff of rights, privileges, or
immunities secured by the Constitution or laws of the United States.
See, Johnson v. Knowles, 113 F.3d 1114, 1117 (9th Cir.), cert. denied,

1 522 U.S. 996, 118 S.Ct. 559 (1997); Karim-Panahi v. Los Angeles Police
2 Dept., 839 F.2d 621, 624 (9th Cir. 1988); Haygood v. Younger, 769 F.2d
3 1350, 1354 (9th Cir. 1985) (en banc), cert. denied, 478 U.S. 1020
4 (1986). Liability under section 1983 is predicated upon an
5 affirmative link or connection between the defendants' actions and the
6 claimed deprivations. See Rizzo v. Goode, 423 U.S. 362, 372-73, 96
7 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
8 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

9 A person deprives another of a constitutional right,
10 where that person "does an affirmative act, participates in
11 another's affirmative acts, or omits to perform an act which
12 [that person] is legally required to do that causes the
13 deprivation of which complaint is made." [citation] Indeed,
14 the "requisite causal connection can be established not only
15 by some kind of direct personal participation in the
16 deprivation, but also by setting in motion a series of acts
17 by others which the actor knows or reasonably should know
18 would cause others to inflict the constitutional injury."
19 Johnson v. Duffy, 588 F.2d at 743-44.

20
21 Here, Plaintiff must set forth specific facts as to each
22 individual Defendant showing what each Defendant did or failed to do
23 with respect to each claim.

24
25 **B. Plaintiff Is Granted Leave To Amend To State An Eighth**
Amendment Claim Concerning his Medical Care.

26
27 It appears that Plaintiff suffers from diabetes, hypertension and
28 renal failure. (See Complaint, Ex. AA at 1.) Plaintiff contends that

1 he is being denied a wholesome, nutritionally balanced, varied diet.
2 Plaintiff alleges that he is being denied the deserts, fruits,
3 condiments, etc. that are part of an adequate renal diet. Plaintiff
4 further alleges that Defendants have failed to provide him with a
5 weekly menu, one week in advance, or post a menu in locations
6 accessible to all general population inmates. If Plaintiff wishes to
7 pursue a claim that Defendants were deliberately indifferent towards
8 his medical care and treatment, Plaintiff must set forth specific
9 facts alleging what each Defendant did or failed to do with respect to
10 his claim.

11 "Denial of medical attention to prisoners constitutes an Eighth
12 Amendment violation if the denial amounts to deliberate indifference
13 to serious medical needs of the prisoner." Toussaint v. McCarthy, 801
14 F.2d 1080, 1111 (9th Cir. 1986), cert. denied, 481 U.S. 1069 (1987);
15 Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285 (1976). Deliberate
16 indifference occurs when prison officials deny, delay or intentionally
17 interfere with medical treatment or in the way in which prison
18 officials provide medical care. McGuckin v. Smith, 974 F.2d 1050,
19 1062 (9th Cir. 1992), overruled on other grounds by WMX Tech., Inc. v.
20 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997); Jett v. Penner, 439 F.3d
21 1091, 1096 (9th Cir. 2006); Hutchinson v. United States, 838 F.2d 390,
22 394 (9th Cir. 1988); Hunt v. Dental Dept., 865 F.2d 198 (9th Cir.
23 1989). Deliberate indifference may also be shown by a prison
24 official's attitude and conduct in response to a prisoner's serious
25 medical needs. Helling v. McKinney, 509 U.S. 25, 32-33, 113 S.Ct.
26 2475 (1993); Estelle, 429 U.S. at 104-05.

27 To state a deliberate indifference claim, a prisoner plaintiff
28 must allege both that the deprivation of medical care in question was

1 objectively serious, and that the defendant official acted with a
2 subjectively culpable state of mind. Wilson v. Seiter, 501 U.S. 294,
3 297, 111 S. Ct. 2321 (1991). The required showing of deliberate
4 indifference is satisfied when it is established that "the official
5 knew of and disregarded a substantial risk of serious harm to [the
6 prisoner's] health or safety." Johnson, 134 F.3d at 1398 (citing
7 Farmer v. Brennan, 511 U.S. 825, 837, 114 S. Ct. 1970 (1994)).

8 The courts have recognized that deliberate indifference to
9 serious medical needs may be manifested in two ways: "It may appear
10 when prison officials deny, delay or intentionally interfere with
11 medical treatment, or it may be shown by the way in which prison
12 officials provide medical care." Hutchinson v. United States, 838
13 F.2d 390, 394 (9th Cir. 1998) (citing Estelle v. Gamble, 429 U.S. at
14 105). In either case, however, the indifference to the inmate's
15 medical needs must be purposeful and substantial; negligence,
16 inadvertence, or differences in medical judgment or opinion do not
17 rise to the level of a constitutional violation. Jackson v. McIntosh,
18 90 F.3d 330, 331 (9th Cir.), cert. denied, 519 U.S. 1029 (1996);
19 Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v. Oregon
20 State Welfare Div., 662 F.2d 1337, 1344 (9th Cir. 1981).

21 Medical malpractice, even gross medical malpractice, does not
22 amount to a violation of the Eighth Amendment. Broughton v. Cutter
23 Lab, 622 F.2d 458, 460 (9th Cir. 1980). A dispute between a prisoner
24 and prison officials over the necessity for or extent of medical
25 treatment does not raise a claim under §1983. See Sanchez v. Vild,
26 891 F.2d 240, 242 (9th Cir. 1989); Shields v. Kunkel, 442 F.2d 409,
27 410 (9th Cir. 1971); Mayfield v. Craven, 433 F.2d 873 (9th Cir. 1970).

28 Plaintiff must set forth with particularity, specific facts

1 demonstrating each individual Defendant's "deliberate indifference" to
2 Plaintiff's medical condition. Plaintiff should state what acts that
3 each individual Defendant did or failed to do to with respect to
4 Plaintiff's medical care. Plaintiff may not simply claim that he has
5 been denied adequate medical care and then list individual Defendants.
6 In order to hold an individual Defendant liable, Plaintiff must name
7 the individual Defendant, describe where that Defendant is employed
8 and in what capacity, and explain how that Defendant acted under color
9 of state law. Plaintiff has not alleged facts showing that
10 individual Defendants were deliberately indifferent to his serious
11 medical needs, or that the course of treatment given to him was
12 medically unacceptable under the circumstances.

13

14 C. **Plaintiff Fails to State a Claim Based on the Processing of**
15 **His Grievances.**

16 "An inmate has no due process rights regarding the proper
17 handling of grievances." Wise v. Washington State Department of
18 Corrections, 244 Fed. Appx. 106, 108 (9th Cir. 2007), cert. denied, 552
19 U.S. 1282 (2008).¹ See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
20 2003) ("Inmates lack a separate constitutional entitlement to a
21 specific prison grievance procedure."); Mann v. Adams, 855 F.2d 639,
22 640 (9th Cir. 1998) ("There is no legitimate claim of entitlement to a
23 grievance procedure."). Plaintiff cannot state a claim based on the
24 mishandling or denial of his grievances.

25 //

26

27 ¹ The Court may cite unpublished Ninth Circuit decisions issued on
28 or after January 1, 2007. United States Court of Appeals for the
Ninth Circuit Rule 36-3(b); Fed.R.App.P. 32.1(a).

ORDER

In an abundance of caution, Plaintiff will be afforded an opportunity to amend his Complaint to attempt to overcome the defects discussed above, and to allege a cognizable constitutional claim. Accordingly, **IT IS HEREBY ORDERED:** (1) Plaintiff's Complaint is dismissed with leave to amend; and (2) Plaintiff is granted 30 days from the date of this memorandum and order within which to file a "First Amended Complaint." The First Amended Complaint must be complete within itself and shall not incorporate by reference any portion of the original Complaint. Plaintiff may not add new parties without leave of the Court. Failure to comply with the requirements set forth in this Memorandum and Order may result in a recommendation that this action be dismissed with prejudice.

DATED: May 26, 2011

/s/

VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE